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ABSTRACT

State open-meetings and records laws, often colloquially termed "sunshine laws," affect public higher education systems in numerous ways. Perhaps most visibly, the laws shape the governance activities of institutional boards and high-level campus leaders. Since their beginnings in the 1970s and 1908s, the laws have become an institutionalized element in public higher-education governance in most states. Unfortunately, however, the laws have only rarely been investigated systematically. This study begins an ongoing examination of sunshine laws with a review of the existing literature. Researchers are beginning an analysis of the current status of these laws using data from six selected cases plus data from a recent national governance survey. Data gathering is not complete; this paper reports on the literature review and discusses the characteristics, dimensions, and variations of the laws currently in place. It considers aspects of the laws deemed harmful or beneficial to effective governance, and describes several potential challenges to the laws. The paper concludes with cautions regarding the complexity of ascertaining the laws' benefits, costs, and ultimate effects. An appendix describes the ongoing study. (Contains 52 references.) (Author/SLD)

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# Governing in the Sunshine: Studying the Impact of State Open-Meetings and Records Laws on Decisionmaking in Higher Education

James C. Hearn
Michael K. McLendon
and
Leigh Z. Gilchrist

Vanderbilt University

July 2003

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# Governing in the Sunshine: Studying the Impact of State Open-Meetings and Records Laws on Decisionmaking in Higher Education


## Abstract

State open-meetings and records laws, often colloquially termed "sunshine" laws, affect public higher-education systems in numerous ways. Perhaps most visibly, the laws shape the governance activities of institutional boards and high-level campus leaders. Most states initiated their laws just twenty to thirty years ago, but in the relative short time since then, the laws have become an institutionalized element in public higher-education governance. Unfortunately, however, the laws have only rarely been investigated systematically. With funding from the Association of Governing Boards and the Center for Higher Education Policy Analysis at the University of Southern California, we have conducted a comprehensive review of the existing literature on these laws and are now beginning an analysis of the current status and potential impacts of these laws using case data from six selected states plus data from a recent national governance survey. The ideal outcomes of the project will include improved understanding of sunshine laws' influences on higher-education governance plus recommendations for future revisions and implementations of the laws. Because data-gathering for the project is still ongoing, this paper does not provide results of the project's empirical work. Instead, the paper reviews the literature on sunshine laws in higher education, with particular attention to the ways these laws shape the governance activities of institutional boards and high-level campus leaders, then considers the characteristics, dimensions, and variations of laws currently in place across the nation, noting aspects of the laws deemed by observers harmful or beneficial to effective governance. The paper concludes with questions for policy analysis and research.

# Governing in the Sunshine: Studying the Impact of State Open-Meetings and Records Laws on Decisionmaking in Higher Education

State open-meetings and records laws are, at the simplest level, laws requiring that a state's public business be conducted in full view of the state's citizens. The working assumption of these laws is that making meetings and records of public entities visible to citizens will ensure accountability and, ultimately, informed decisionmaking regarding public resources. Often colloquially labeled "sunshine laws" these laws are products of public concern over the ways state leaders make decisions. Although their specific terms are often rooted in distinctive local political conditions, each state's sunshine laws seek to ensure that the public good rather than private gain is the primary factor in decisionmaking within publicly funded and controlled entities. Every state has sunshine laws and in every case those laws have been applied to public higher-education systems and institutions.

This paper provides some background on the emergence of open-meetings and records laws, then assays the modest available literature on sunshine laws in higher education, with particular attention to the ways these laws shape the governance activities of institutional boards and high-level campus leaders. The paper next considers the nature, scope, and application of sunshine laws currently in place across the nation. The paper concludes with questions for policy analysis and research.

## The Emergence of Sunshine Laws as a Factor in Higher-Education Governance

Open-meetings and records laws are a relatively modern creation, with solely U.S. origins and no basis in prior common law (Cleveland, 1985a). The first legal statute requiring openness in public decisionmaking was passed in 1898 in Utah. Florida passed similar legislation soon after the turn of the century. Florida significantly revised its laws in 1954, and that effort helped stimulate new legislation in other states. By 1959, twenty

states had a law requiring open meetings or records. In the 1970s, the Watergate scandal and other crises of public confidence in American political institutions helped prompt all remaining U.S. states to adopt their own similar legislation. According to Cleveland (1987, p. 24), the adopting states of the 1970s crafted their laws "out of revulsion ... for deception, corruption, and cover-up in high places."[1] All states continue to have sunshine laws on the books. This nationwide institutionalization of the laws reflects an arguably foundational commitment to the idea of "openness" in government.

Of course, such broad national characterizations hide differentiation and fluidity at the state level: there is substantial state-by-state variation in the origins and nature of these laws, and each state's sunshine laws remain subject to revision at all times. Most states have refined their laws over the years since implementation, on the basis of experience. Of particular importance for this paper are actions taken by many state legislatures, courts, and state attorneys general to alter application and interpretation of sunshine laws as they relate specifically to public colleges and universities. One recent study (Estes, 2000) found that by the late 1990s 22 states had created exemptions in their open-meetings and records statutes so as to permit public colleges and universities and other publicly affiliated agencies to withhold names of all but a few finalists for executive positions.

Open-meetings and records laws are thus a topic of sufficient import to merit legislative and judicial attention. As might be imagined, these laws influence many processes and structures within public colleges and universities, from individual personnel records to the awarding of multi-million dollar building contracts. Nevertheless, it seems reasonable to argue that no domain of the laws' influence is as important as institutional and system governance. Governance, defined by Birnbaum (1988) as the structures and processes through which institutional participants interact with each other and communicate with the larger environment, is central to the life of colleges and universities. Institutional success depends on leaders capably dealing with such critical issues as the selection of presidents and chancellors, the monitoring of

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[1] Indeed, it was in that period that the expression "sunshine laws" emerged: the public's aversion to "shady dealings" made the metaphorical allusion to daylight an attractive shorthand term for open-meetings and records laws.

budgets and investments, the determination of research and technology-transfer policies, and the like. To the extent sunshine laws shape the nature and effectiveness of governance by institutional boards and administrators, they are worthy of sustained analytic attention.

**The Literature on Sunshine Laws**

Unfortunately, policy analysts and scholars have only rarely turned their attention to sunshine laws as they affect public higher education. This paper is part of a larger project aiming to address that need. The "State Open-Meetings and Records Laws Project" encompasses creating an annotated bibliography (see McLendon, Gilchrist, and Hearn, 2003), reviewing the modest available literature and discerning critical issues relating to sunshine laws in higher education (the focus of this initial paper), and conducting case analyses of experiences with sunshine laws in six geographically, demographically, and educationally diverse states. Ideally, this work will lead to greater practical and conceptual understanding of a complex and greatly understudied topic. For more information on the larger project, see Appendix 1.

As noted above, only a modest literature on sunshine laws in higher education has accumulated over the past several decades. Some of the literature of the 1970s and 1980s, the years of increasing universality of sunshine laws in higher education, may be viewed as bold and foundational (e.g., see Kaplowitz, 1979; Cleveland, 1985). Since that period, however, such contributions have been limited. Our review of that literature suggests five general findings. First, and most significantly, there has been extraordinarily little systematic empirical research on this topic. Anecdotal, journalistic, and hortatory material abounds, and we cover some of that material in our annotated bibliography on the topic (McLendon, Gilchrist, and Hearn, 2003), but conceptual and empirical analysis is sorely missing. Moreover, much of the conceptual and empirical analysis that does exist (e.g., see Cleveland, 1985a; McLaughlin and Riesman, 1985, 1986) is now nearly two decades old.

Second, most material on the topic focuses on detailing the experiences of a single institution or a single state, rather than comparing experiences in generalizable fashion

across geographical, political, and organizational contexts. While many such articles are insightful, their applicability to other settings tends to be limited. For example, the literature contains many articles regarding sunshine and governance in Florida higher education (e.g., see McLaughlin and Riesman, 1986, 1989; Coburn, 1992; Healy, 1998; Basinger, 2001). Yet, Florida requires a distinctively open environment for governance decisionmaking, and its laws are perhaps the most restrictive in the country regarding exceptions for closed meetings (see Cleveland, 1985a; AASCU, 2002).[2] Florida is the "sunshine state" in more ways than implied by the state's license plates. The level of attention observers have paid to this particular state's laws is warranted, but across-state variation in the nature of sunshine laws is substantial, and warrants greater analytic attention than it has thus far received.

Third, however, several recent legal analyses provide valuable insight and perspective on the positions taken by various state courts on the applicability of state sunshine laws to public higher education. Notably, Estes (2000) summarizes court decisions in cases involving the application of state open-records laws to universities' presidential searches, and discusses some of the statutory changes states have enacted as a result of court decisions viewed as adverse by legislatures. According to Estes's research, at least 22 states now have open-records laws containing exceptions that would appear to permit the nondisclosure of the names of applicants for public employment, with three of those applying only to public university presidential searches (Michigan, New Mexico, and Texas). All three statutes apparently were passed by state legislatures in response to court decisions requiring universities to disclose the names of candidates.

Interestingly, Estes identifies a repeated pattern in this arena: a state university's presidential search attracts litigation from the media in pursuit of greater disclosure of candidate identities, the media win their lawsuits, then the university successfully appeals to the legislature, pointing out that it cannot attract good presidential candidates under the rules demanded by the press and the courts. Estes concludes (p. 509) that this may not

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[2] The word "restrictive" is used variously in the sunshine literature, and is perhaps best avoided. Media advocates often bemoan restricted access, while disgruntled board members complain about restrictions on what can be communicated privately among board members. Thus, to term a particular law "restrictive" could be interpreted in two distinctly different ways.

necessarily be a harmful pattern: "Perhaps state legislatures are in the best position to judge the value of attracting top leadership to their higher educational systems, and can balance the desire for total openness with the practical reality that such openness will diminish their state's chances of attracting top candidates..."[3]

Fourth, we discerned from the literature a consistent assertion that, in order to achieve the "public good" which they seek to serve, state sunshine laws demand a delicate balancing of at least two sometimes conflicting interests; public access to information versus rights of information privacy. Cates and Varn (1999), in a comprehensive analysis of information-access issues across a variety of public settings (not solely higher education), note that in any dispute over such issues, interests in conflict can include equality, freedom, participation, security, economic opportunity, quality of life, intangible values and uncertain fears, efficiency, and fairness. Arguing that privacy and access cannot easily or always be balanced, they tend to favor openness in most circumstances. In defense of that view, they note that Supreme Court Justice Louis Brandeis,[4] although well known for his defense of the "right to be left alone," argued that "[i]f the broad light of day could be let in upon men's actions, it would purify them as the sun disinfects." Brandeis concluded, they note, that while there is clearly a right to privacy, there should also be a "duty of publicity."

In higher education, observers have identified three sets of competing interests, rather than two: the individual's right of privacy; the public's right to know; and, the public college or university's need for freedom sufficient to function effectively and efficiently. The clearest expression of this so-called "trilemma" may be found in Harlan Cleveland's study, *The Costs and Benefits of Openness: Sunshine Laws and Higher Education* (1985a). There, Cleveland argues that formally ensuring the citizenry's right to know provides several benefits, most notably greater inclusion of the public in institutional decision-making and enhanced protection against corrupt decision-making. The costs of that openness, according to Cleveland, are most troubling in ongoing institutional functioning. He especially stresses the potentially corrosive effects of sunshine laws on

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[3] Sherman (2000) also provides a useful examination of legal issues in presidential searches.

[4] Writing in 1891, cited in Cates and Varn (1999, pp. 13-14).

the discourse of the decision-making process in higher education. Cleveland notes that, as of the mid-1980s at least, an appropriate balance had yet to be struck, and he recommended in response a series of reforms that might help remedy the imbalances.

Finally, we note in the recent literature a preponderance of sunshine-related articles devoted to a single topic: presidential search and selection (see, e.g., Leatherman, 1995; Lehman, 1997; Healy, 1998; Selingo, 1999; Estes, 2000; Sherman, 2000; Basinger, 2001). Controversies on this issue have arisen in Florida, Michigan, and numerous other states, and perhaps no other sunshine-related decision arena has prompted so much litigation, legislative action, and editorial attention. The most recent presidential search and selection process to become subject to openness-based litigation took place at the University of Minnesota (see University of Minnesota News Service, 2003). The case is instructive because, like the Universities of Michigan and California, the University of Minnesota has in the past successfully argued a legal claim to constitutional precedence and autonomy in certain state-related disputes. In the current case, in response to a suit by a local newspaper, a county district court has rejected the university board's claim of constitutional autonomy regarding the application of the open-meeting law in the selection of a president last fall. In announcing a forthcoming appeal, the university's General Counsel argued (ibid., p. 1) that:

> This is a very important case for the university. As a public body, the Board of Regents is fully committed to conducting its business in public. However, in this very narrow and rare case, to select the very best president, the board deemed it was necessary to invoke its constitutional autonomy. The Minnesota Supreme Court has repeatedly declared that the University of Minnesota is a constitutionally autonomous state entity, and, as such, the board is directly accountable to the people for managing the university's internal affairs. We hope our arguments will receive a favorable reception in the appellate courts.

The selection of a president is arguably the major governance responsibility of boards of trustees. The recent attention to the issue by the media and some analysts is certainly

warranted. Still, it is striking that numerous other topics of prospective importance remain largely ignored. Schmidt (2001) noted that presidencies were only one of three critical areas in which requests for access to information are being vigorously fought by institutions, the others being the identities of donors to colleges and the details of proprietary research on campuses. Similarly, in our early visits to our six state sites for the research project, we have found presidential searches no more on the mind of higher-education leaders, the media, and other stakeholders than other sunshine-related governance issues, such as the institutional investment decisions, decisions regarding security on campus, and contracting decisions. Most presidents stay in their positions for at least five years, and only some presidential searches raise sunshine-related matters, so issues involving *both* searches and sunshine laws only infrequently arise on a given campus. When presidential searches do arise, they hold potential to become contests for vigorous debate about the appropriate balance between openness and privacy, but other kinds of sunshine-related issues occurring more regularly in the lives of institutions are likely no less important. Comparable attention to these other issues seems warranted.

**The Nature, Scope, and Application of Sunshine Laws**

The nature, scope, and application of sunshine laws vary substantially across geographical and jurisdictional boundaries. Not only does each state have its own version of sunshine laws affecting educational institutions, but within states there is often variation by system in the application of sunshine laws to higher education institutions. For example, as noted earlier, the flagship university in some states has a form of constitutional autonomy not provided to other four-year and two-year institutions in the same state (see Sherman, 2000). In these states, sunshine laws are partly or wholly specific to the system at hand.[5] Similarly, in some states, vocationally focused postsecondary institutions may be covered under the laws for K-12 education rather than those for two and four-year institutions of higher education.

The specific laws affecting individual institutions vary on many dimensions. Beyond the variations in the laws themselves, there can be variation is the extent to which a law is applied to particular circumstances. The following section reviews Schwing's (2000) nine dimensions of variation in sunshine laws, with attention to the application of the laws as well as their nature and scope.

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[5] Although claims to autonomy as a defense against sunshine provisions are not always successful in court (see University of Minnesota News Service, 2003).

First, laws vary in the *definitions of entities subject to open-meetings and records laws*. Not only is their variation at the level of different sectors of institutions, but there is also variation within individual institutions. Are university senate meetings subject to the laws, for example, or consultative meetings of faculty leaders and the president? Are university student groups subject to the laws? Are independent foundations established for the express purpose of university fund raising subject to sunshine laws?

Second, sunshine laws vary in their *mechanical details*. For example, what is to be considered a record of an event? What does openness in a meeting entail in regard to spaces for the public or media in a room? How quickly must records be provided after an event? Must record be kept of those deliberations held in executive session by a board? If so, are they subject to open records laws, even if the oral deliberations of the board in executive session are protected?

Third, sunshine laws vary in their *definitions of meetings, quorums, deliberations, and voting*. How many members of a board must be present for a meeting to be officially subject to sunshine laws? What constitutes a quorum? What kinds of interactions are considered official deliberations, as opposed to consultations? What is the threshold for determining when a social interaction among several board members becomes a "public event" subject to open-meetings and records laws? Are "electronic meetings" (e.g., by speaker phone or over the internet) subject to the laws? Does a series of board members' informal expressions of approval for a president's decision on some matter constitute a vote of a board on that matter?

Fourth, sunshine laws vary in their *exemptions for executive sessions*. What kinds of issues qualify a board to move into a closed session outside of public view? Among the prominent issues in which such moves are allowed are personnel issues (such as leadership selection), certain business negotiations, real-estate deals, investment discussions, and issues affecting individual privacy rights. States vary substantially in the extent to which they offer exemptions under these different conditions and in the burdens they impose upon boards during executive session (e.g., whether an agenda or minutes must be kept; whether the executive session, like other meetings of the board, must be "posted" in advance; etc.).

Fifth, sunshine laws vary in the *remedies* they provide for violations of open-meetings laws. In a legal sense, remedies are the ways courts award individuals and organizations aggrieved by the violation of a law. In sunshine disputes, remedies may potentially include voiding of earlier decisions, equitable relief for aggrieved parties, civil

penalties, and criminal penalties (Cleveland, 1985a). In one state, we have been told that the price to be paid for non-compliance with sunshine laws makes that a "high-risk" domain for higher-education officials. In turn, that state invests heavily in legal expertise for its colleges and universities.

Sixth, sunshine laws vary in the *cures* specified for violations of open-meetings laws. That is, to avoid such violations taking place in the future, courts may impose certain strictures on the violators. These strictures can vary by state.

Seventh, sunshine laws vary in their allowable *defenses to actions under open-meetings laws*. This dimension of variation relates to the nature of exemptions, discussed above. Institutions can claim, for example, that a particular record was not released because of possible damage to an individual, or that release of a record under a lawsuit might affect the institution's chances of securing a favorable price for land purchased with the public's money.

Eighth, sunshine laws vary in the prescribed *process of open-meeting litigation*. In some states, intermediaries might be established, or particular courts assigned, for claimed violations of the laws.

Ninth, sunshine laws vary in their *stipulations for attorneys' fees, defense arrangements, and reimbursement*. These technical details, as recounted by Schwing (2000), lie beyond the scope of this paper.

It is important to stress that the actual context affecting an institution depends not only on the letter of the law itself but also on the ways the law is applied and accepted in a given state. A given law from one state imposed in a state system differing in cultural, political, and historical context might have very different effects on governance from those it has in its original context. Thus, discussions of potential harms from the laws are necessarily context bound. For example, applying the relatively strict laws encountered by University of Florida board members, leaders, and faculty to the context of the University of California, Berkeley would no doubt lead to extraordinary tension and remarkable changes in climate at the latter institution. Similarly, Iowa's acceptance of consensual (rather than statutory) practices regarding the openness of presidential searches would probably startle media and institutional stakeholders in Massachusetts or Texas.

**Questions for Policy Analysis**

In the absence of much systematic prior analysis of the governance-related aspects of sunshine laws, and before reaping the benefits of our current empirical work, we are most comfortable offering a series of questions meriting attention from policy analysts and researchers. We begin in this section with questions for policy analysis.

*To what extent are the governance implications of open-meetings laws intertwined with the governance implications of open-records laws?* Open-meetings and open-records laws stem from similar public impulses, and both affect the work of governing boards and other high-level decisionmaking in higher education. Clearly, however, the two kinds of sunshine laws require different behaviors and raise somewhat different issues. In one state we visited, for example, a higher-education system's legal staff were divided neatly between those focusing on meetings and those focusing on records. Interestingly, although both appeared to have plenty of work to do, it was clear that open records involved the most contested terrain. Early interviews suggest to us that the press may be more interested in open records, and much more concerned about problems in that arena, perhaps because of a perception that records are easier to conceal than are proceedings of meetings of senior institutional officials.

Interestingly, some areas of ambiguities between the two can arise. For example, a board may receive paperwork for its meetings at the meeting itself or before the meeting, via mail, and in some states it appears that different legal issues can be involved in these two forms of communication. To what extent is effective coordination and integration of the two kinds of laws needed? Along those lines, several informants in one state pointed to a "misalignment" in open-meetings and open-records laws there: boards are allowed to meet in executive session to discuss a fairly large number of issues, but state open-records laws require that any written notes taken in those executive sessions are subject to public disclosure. One implication involves the potential public perception of deception by the university: it may be unclear why a university claims privilege involving oral comments when notes are subject to disclosure.

*To what extent are the role of the board chair and other members changing in response to sunshine laws?* Several respondents have noted to us that sunshine laws have altered the role of board chair significantly. Where, in the past, chairs could expect open discussion at meetings pointing to an undetermined outcome, they now feel a need to have the most fundamental differences aired and decisions made in one-on-one interactions prior to official, on-the-record board meetings. A similar point may be made

regarding the work of other board members. Like chairs, they may need to resort more to dyadic interactions under the constraints of sunshine laws. A different skill-set may now be required of chairs, and this may merit attention from both a research and policy perspective. Likewise meriting attention is the derived hypothesis that chairs are significantly empowered by sunshine laws because only they may be able to obtain rich knowledge of the concerns, positions, and political view and sensitivities of each of the board members.

*What topics are avoided because of open-meetings laws?* We have some early evidence that boards under sunshine laws may sometimes not feel sufficiently comfortable to discuss potentially controversial issues in the glare of media and public attention. Respondents have described the current content of board deliberations in such evocative terms as "candy coated," "sugar coated," and "fluff."

It has been frequently pointed out in the organizations and political-science literature that what is not on the agenda is as important as what is (e.g., see Kingdon, 1984). Ironically, board members' reluctance to publicly discuss issues like the advisability of establishing a new medical school at a predominantly African-American university (an example raised for us in one state) may force decisions regarding those issues to be made after less effective forms of deliberation (e.g., one-on-one conversations), or after avoidance altogether. Sometimes, non-decisions may be the inevitable result of non-discussion, and may constitute a failure on the part of public officials to take needed action. It seems important to consider issue avoidance as a potential outcome of sunshine laws.[6]

*Does the "no lateral moves" hypothesis stand up to scrutiny?* It has been suggested that sunshine laws create a bias in the outcomes of presidential searches in public institutions towards candidates currently at lower-level positions, particularly provosts. The hypothesis rests on the assumption that candidates already holding presidencies at comparable institutions will tend to be unwilling to expose their candidacies to public view, for fear of losing the backing of the board at their present institutions. Stories of this kind of backlash abound, with the premier example being that of the president of the Florida State University exploring the presidency of Michigan State, only to lose his position at Florida State as a result (Leatherman, 1993a, b). With this risk in mind, sitting presidents in public institutions may avoid pursuing presidencies in similar institutions,

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[6] The pattern may reflect the problem noted by Ingram (1995, p. 27): "Some of these [sunshine] laws are counter-productive to conscientious trusteeship; rather than encouraging good institutional governance and management, some state laws inadvertently discourage it."

making the field more open to presidents of less prestigious institutions or second-level administrators (most frequently, provosts) at comparable institutions.

Several respondents noted to us that, via this process, sunshine laws may be effectively diminishing the quality of the public university presidency. According to one critic's perspective, "No [sitting] public university president worth his salt would put himself through the demands of a public search these days." For such individuals, the pursuit of presidencies in private institutions may be a more attractive career choice when it is time to end a prior presidency. It is important to note, however, that there is little hard evidence favoring or disfavoring the "no lateral moves" hypothesis. The hypothesis seems well worth investigation, because it has significant implications for the experience levels and, ultimately, the effectiveness of leaders in public institutions.

*To what extent are individuals and organizations, as opposed to the laws themselves, responsible for the effects of sunshine laws in higher education?* Some respondents have suggested to us, at least indirectly, that institutions, units, and individuals mediate the effects of sunshine laws on higher education. For example, a change in attorney general in one state significantly affected the climate for interpretations and enforcement of sunshine laws in that state, and raised consciousness about the laws to much higher levels than under the prior attorney general, who had taken a less rigorous view of the laws' requirements for institutions. Other respondents have told us that different institutions within a given system often take notably different approaches in compliance. These variations are intriguing and potentially quite important for policy development.

*What determines the level of manifest concern with sunshine laws in governance activities?* It is clear from our early site visits that states vary remarkably in their ongoing levels of attention to openness issues in higher education. In some states, higher-education officials attend closely and quite consciously to issues involving sunshine laws. Comments by leaders interviewed in such states are cautious and resonant with past experiences relating to the requirements of sunshine laws. In other states, leaders have to strain to think of relevant experiences or concerns with the laws. Interestingly, the laws' required level of openness may not be the sole determinant of these variations. Media environments, critical judicial holdings, past controversies, and other factors may be equally at work in shaping the extent to which the laws are salient to governance work. What influences the extent to which leaders are actively conscious of the requirements of the laws? And what are the practical consequences of these ongoing sensitivities and concerns regarding the laws?

*Do sunshine laws impede opportunities for socialization and development for board members outside of the public eye and, if so, does that diminish their effectiveness?* A number of observers have noted that board members, especially those new to such service, need ample opportunities to ask any question that come to their mind and learn outside of the public eye – as one board member we interviewed suggested, people in such positions need to be able to ask "the dumb questions, the ones we wouldn't ask in public." Under some open-meetings laws they hesitate to ask such questions because of worries over being seen as uninformed and ineffective. How does that worry and hesitation affect board operations? To what extent is it dysfunctional for boards, and how might it be addressed more effectively?

*Are open-records laws affecting the ability of boards to attract capable members?* One argument posed in opposition to open-records laws is that the requirements that prospective board members disclose details of their financial status as well as potential conflicts of interest makes highly accomplished leaders from professional and business sectors less likely to serve. As yet, no respondents have mentioned this to us as a concern, but it seems well worth further pursuit.

*Do security concerns and changing technologies require substantial refinements to sunshine laws?* Security concerns can raise important new concerns regarding the desired and necessary level of openness. Does the public have the right to know, for example, the precise placement of security cameras on a public university campus? When students recently pressed the University of Texas to provide that information under open-records statutes, the university resisted. In the end, the state attorney general's office ruled that, because the university is not a police agency, it cannot keep this information private, even though doing so might allow criminals and terrorists to avoid detection (see Young, 2003). For obvious reasons, discussion of the implications of this ruling is ongoing.

Emerging technologies can raise similarly novel issues. In the arena of open-meetings laws, for example, the proliferation of electronic communication can raise decidedly new issues. In one state, a recent controversy arose over whether sunshine laws applied to one e-mail message that was forwarded from one member of a board to another until a majority had responded. Is asynchronic dyadic electronic communication subject to open-meetings and records restrictions on board "deliberation," if such communications eventually involve all members of the board?

Few researchers, legal analysts, or policy analysts have considered connections between sunshine laws and emerging security issues and technologies. Such attention from all quarters is warranted, our respondents tell us.

*Under what conditions do legally mandated openness and effective governance coincide?* The literature on sunshine laws tends to elide the scope of sunshine laws with the problems in sunshine laws. For example, Florida is generally believed to be the most open state in its sunshine laws in higher education, and it is also the state most often criticized for the effects of its laws on higher education. In contrast, California is often portrayed as a somewhat less open state (especially in the University of California system), and has also been characterized as having laws more effectively dealing with higher-education's special needs. This association of openness and ineffectiveness is suggested in the literature, usually implicitly, but has no empirical basis to our knowledge. Exactly when is "shade" really preferable to "sunshine"? Can expansive sunshine laws co-exist with effective governance? How?

*In which contexts is the press most influential in governance, via open-meetings and records laws?* It is clear that states vary in the aggressiveness of their press regarding relationships with higher education, a point noted to us by numerous of our national and state-level experts and also raised by a trustee/journalist quoted in a dialogue published by the Association of Governing Boards of Universities and Colleges (2002, p. 11): "The basic question about friend or foe depends on the general relationship between the institution and the press. If the institution handles its press relations in a satisfactory way, then the press is going to get some information, but it is likely to be done cooperatively. If it's a very vicious relationship, a lot of reporters and editors may try to 'get you.' That's just human nature."

The reasons for variations in institutional relations with the press are many. Several respondents have provided us with anecdotes about intense animosities between editors/publishers and particular university presidents. Our respondents have told us this outright "dislike" has clearly influenced press coverage and aggressiveness in those settings. Another rationale potentially explaining the variation in media coverage is the competitiveness of the media: when more than one newspaper is present in a metropolitan area or covering state politics, and sales are critical to advertising dollars and ultimate survival for a media outlet, then coverage of governance and other activities in higher education will tend to be aggressive and, to hear some respondents talk, intrusive. Other respondents note that the uncovering of problems in earlier years (e.g.,

in lucrative contract settlements with disgraced former coaches) provides incentives to the press for continuing aggressive coverage, under the assumption that further scandals lie waiting for discovery in the local college or university. Similarly, the appearance of discomfort can also encourage press scrutiny. Along those lines, a trustee who is also a professor has noted that (AGB, 2002, p. 11) that "Most universities I've covered are poor at handling the difficult or embarrassing story. … They're almost always defensive, and they try to cover up. And any good reporter is going to go after that."

*Is there a trend toward the weakening of sunshine laws?* Open-records complaints by students to the Student Press Law Center have risen in recent years, according to officials of that organization cited by Schmidt (2001). In a similar vein, Charles N. Davis, executive director of the Freedom of Information Center at the University of Missouri School of Journalism (quoted in Schmidt, 2001, p. A21), has expressed the opinion that, "Overall, there has been a fairly steady retreat from openness" in higher education, adding that whereas before, "the presumption was disclosure… Now, the presumption is litigation." Our initial respondents have tended to disagree regarding their own state contexts, but our data are limited and the question remains open for further analysis.

*Can the cost-effectiveness of sunshine laws be assessed?* In some states, sunshine laws require sizable ongoing allocations be made by institutions and systems in securing legal expertise. The risk of non-compliance, in terms of the remedies prescribed by the relevant sunshine laws, is simply too great to do otherwise. Such investments are largely defensive measures, to hear attorneys describe them, and as such raise the question of whether the funding could be better spent in other domains if the potential judgments against institutions and systems were not potentially so painful. The work of attorneys in such "high-risk" states could be examined, with the intention of reaching some tentative judgments regarding relative costs and returns.

Similar cost concerns arise in the arena of public-records requests. One state-level general counsel raised the possibility of an individual or group requesting hundreds of thousands of e-mail messages, forcing major disruption in the day-to-day business of institutions and systems. While there are usually charges associated with records requests, some requesting bodies (e.g., some media organizations and privately funded public-interest groups) are prepared to pay such charges. Unfortunately, the charges may not cover all costs to the records provider, such as the direct and indirect costs associated with unusual hiring, staffing, and subcontracting needs. Clearly, there can be financial implications to open-records requests, and these have not been studied systematically.

It is important to note that the investigation of costs and effects should not underestimate the importance of undeniably difficult-to-measure and abstract non-economic returns to the effort to pursue openness. Such returns may be greater, and more important, than can be easily put in quantitative terms. What is more, what seems non-economic on the surface may in the end indeed be economically important, especially if certain core public values are violated. Along these lines, a trustee who is also a journalist has noted (AGB, 2002, p. 11) that "A lot of university people have bamboozled themselves to think that what they do should be free from public inquiry. This has contributed profoundly to the inability of most universities to set out in compelling ways why they should receive resources."

*Does the inclusion of a variety of stakeholders in decisionmaking buffer governance officials from restrictive sunshine laws?* Some observers report to us that their institutions structurally ensure the involvement of a variety of stakeholders in governance activities, and that such an approach can lessen later pressures for disclosure of the details of decisionmaking activities. Such an assertion is ultimately difficult to analyze, but its implications for the structuring of everyday decisionmaking are significant and worth consideration.[7]

*To what extent are institutions using their legally independent foundations to avoid scrutiny under the terms of sunshine laws?* Schmidt (2001, p. A22) concluded from a journalistic study of trends in public institutions that, in many states, "public-college foundations have been able to put the identity of their donors, and details of their business affairs, out of the reach of freedom-of-information laws without having to lobby for new state legislation. They have accomplished this by legally distancing themselves from the public colleges that they support – in many cases, hiring their own staffs, paying for their own operations, and moving off campus – to avoid being regarded by the courts as an arm of a state entity." This assertion by institutions is troubling to openness advocates, and merits empirical attention.

*Have critics accurately identified problems in sunshine laws, and if so, have the laws been refined appropriately to address those problems?* Sunshine laws have been criticized as much or more than they have been praised. Judith McLaughlin and the late Harvard sociologist David Riesman were especially trenchant in expressing their concerns (1985, 1986, 1989, and 1990; Riesman, 1983). McLaughlin and Riesman

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[7] Also worth consideration, but similarly difficult to research, is the extent to which such involvement might "work" because of substantive contributions from diverse stakeholders versus because of cooptation of the individuals involved.

argued (1985, p. 352) that, when sunshine laws are applied to presidential searches, "the ability of search committees to conduct successful searches is almost destroyed," often because the real needs of institutions cannot publicly be discussed. Moreover, those authors asserted that searches conducted in the sunshine lowered "markedly" the quality of the applicant pool and that sunshine laws do not necessarily produce legitimacy (as proponents of sunshine legislation often claim) because "plebiscitary" settings can foster distrust even while promising fairness.

In the wake of many states refining the ways sunshine laws affect their executive searches (see Estes, 2000), the question arises as to whether the refinements make sense. Texas instituted a refinement in which candidates' names remain secret until 21 days prior to the decisive board meeting, while other states have refinements keeping names secret until a pool of three to five "finalists" is named.[8] Is one refinement more effective than the other? In what ways do such strictures affect the search process?

A variety of public officials have expressed concerns about the laws' potential effects on governance (see Cage, 1989; Ingram, 1995; Leatherman, 1995), some stressing that their concerns extend beyond the familiar territory of presidential searches. In an undated essay, former Illinois State University chancellor R.T. Groves noted that sunshine laws can hurt the effectiveness of boards because board members need a chance to "interact comfortably and easily, free from intimidating formalities" and free from the " 'gold-fish bowl' atmosphere of business meetings and the threats of personal embarrassment and unintended controversy" (p. 2). Suggesting that media attention may be reduced by using all available opportunities for smaller, private meetings and discussions, Groves states (p. 8):

> Public boards are by definition public and have a responsibility to conduct their business openly. Sunshine laws have made this a legal requirement. Yet such laws were probably never intended to curb efforts to build internal cohesion and effectiveness in the ways discussed in this paper. Certainly they should not be allowed to defeat that purpose. Even if private settings cannot be assured, system boards and system heads should persevere in efforts to provide such activities and make them as beneficial as possible.

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[8] In Minnesota, it was the presentation of a finalist pool of only one person that prompted a suit by a local newspaper.

*Have supporters accurately identified appropriate alternatives to sunshine laws?* Conversely to the preceding question, it seems important for the supporters of sunshine laws to consider ways in which the same goals might be served by other policy mechanisms.[9] Recent debates and legal challenges concerning affirmative action led to consideration of alternative ways to serve the diversity goal in the face of public challenges. In parallel fashion, the existence of substantial discontent with the implementations of sunshine laws in certain settings may require creative attention to ways that the benefits of openness in public organizations might be achieved absent currently legislated sunshine requirements.

**Questions for Organizational and Political Research**

Unlike the questions above, the questions raised here point more to understanding the behaviors of state governments, institutions, and stakeholders as "dependent variables," rather than focusing on directly improving sunshine-related policies and practices. Addressing basic research questions of this kind arguably promises scholarly insights but few practical benefits. Ideally, however, addressing the questions may eventually, and perhaps indirectly, provide some guidance for policymakers and leaders.

*Does the history of sunshine laws in various settings follow patterns noted in earlier research on policy innovation and diffusion?* We have noted in the literature what appear to be several distinct eras of widespread adoption, and subsequent modification, of state sunshine laws, notable examples of which being the periods of the late 1960s through the mid-1970s and the period of the mid-to-late 1990s. This apparent phenomenon of many states taking action in a common policy domain at approximately the same period in time raises interesting questions about the extent to which policy ideas may become *diffused*, or spread, across the American states.

The work of eminent political scientist, Jack Walker (1969), on the diffusion of innovation among the states was among the first systematic examinations of this phenomenon. Walker examined the geographical spread of numerous government policies over the course of U.S. history, uncovering what he characterized as a "national system of emulation" (p. 898), with regional variation in policy innovation based on imitation of bellwether states. In other words, the pattern of innovation was one of regional leaders adopting a policy first with other states in a given region following suit. Walker's work helped shift the focus of analysis in policy adoption research from the

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[9] We are indebted to Bill Tierney for this suggested question.

internal determinants of innovation (i.e., social-demographic, economic, and political features within states) to the interstate migration of policy ideas (i.e., how states copy one another's behavior). His work also stimulated three decades of scholarly interest in the nature of policy innovation and diffusion among state governments, this interest having accelerated in recent years as a result of new methodological and conceptual advances (Berry and Berry, 1999). Evidence of a diffusion "effect" on state governmental behavior has been identified in studies conducted across a wide range of policy domains (Berry and Berry, 1990, 1992; McLendon, Heller, and Young, forthcoming; Mintrom, 1997; Mooney and Lee, 1995; Wong and Shen, 2002). The explanation for the spread of policies across state boundaries typically is that, (1) states may seek to emulate one another in an effort to simplify the complexities of public decision making (i.e. lack of time and resources), (2) states may compete with one another in order to achieve comparative advantage or to avoid being disadvantaged relative to their peers, and (3) state officials, responding to electoral pressures, may seek to adopt in their own state popular programs or policies that exist in neighboring states (e.g., lotteries).

This larger literature suggests a series of questions that might help frame research on the origin, evolution, and proliferation of state sunshine laws. Under what set of conditions are states most likely to seek reform of their state sunshine laws? To what extent do states borrow ideas to reform state sunshine laws from their neighbors or peers? Do states largely emulate their neighbors (i.e., implement policies previously adopted elsewhere), or do they engage in a form of "policy learning," in which they seek to learn from one another's successes and failures in the application of state sunshine laws to higher-education institutions? What are the communication channels that help disseminate information about the experiences higher-education institutions have had under state sunshine laws? What is the role of professional organizations or regional and national policy organizations in disseminating information and new ideas? Are the ideas for change in state sunshine laws as they affect public colleges and universities coming from within the higher-education community or without (attorneys general or other important state level actors)?

*What role does the issue-attention cycle play in sunshine laws' implementation, refinement, and effects?* Our review of the literature and initial interviews with long-time observers of state sunshine laws suggests a cyclical, patterned and dynamic relationship among the general public, the media, institutions of higher education, legislatures, the courts, and attorneys general in the growth and evolution of sunshine laws. Specifically,

many states evince the following pattern: intense media coverage of a local (state-level) scandal or crisis makes manifest latent and lingering public concern about the integrity of government and/or public officials;[10] landmark sunshine legislation is then passed in the state as part of an effort to restore public confidence in the integrity of governmental institutions and processes; the law's passage initiates a period of gradual decline in strong public interest in "openness in government;" court rulings and subsequent opinions rendered by the state's attorney general help clarify the scope of open-meetings and records laws as they apply to institutions of higher education; these rulings and opinions impose new or unexpected institutional burdens; emerging problems and dilemmas involving institutional compliance with state sunshine laws, often reported upon by the media, prompt public colleges and universities to seek legislative remedy in the form of certain statutory dispensation for their institutions (e.g., revising state law to allow universities to shield from public view the names of candidates in a presidential search until a slate of "finalists" is designated); and, finally, media coverage of the new "secrecy" in public higher education stimulates public debate about the extent to which public colleges and universities should be subject to the same laws as are other state agencies.

This cyclical pattern seems to conform generally with Anthony Downs's (1972) "issue attention" cycle, a popular conceptualization of how public attitudes, political institutions, and private interests combine to create a cycling of issues over time. According to Downs, public problems never truly are "solved" or settled. Rather they merely incrementally advance onto and recede from the public agenda, morphing over time as "solutions" become the seeds of new problems, which are then defined in different ways, thus attracting renewed public interest for some "new" set of solutions. It seems worthwhile to investigate the extent to which this pattern has indeed been followed, and if so, the extent to which it might inform further research as well as practice.

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[10] The 1971-1972 "Sharpstown" stock-fraud scandal, coming on the heels of public frustration over the Vietnam War, plunged Texas into a major political crisis when federal and state charges were brought against two-dozen high ranking state officials for bribery and fraud. At the center of the controversy was the allegation that the officials accepted money in return for the passage of legislation desired by Frank Sharp, a Houston businessman. The federal and state investigation resulted in a "thorough housecleaning" of Texas state government: the incumbent governor was labeled a co-conspirator and lost his bid for reelection; the incumbent House speaker was convicted on felony charges; the three-term attorney general was turned out of office; a popular lieutenant governor's career was ended; and half of the legislature was either "intimidated out or voted out of office." In 1973, the state adopted its historic open-meetings and open-records laws partly in response to this scandal (Handbook of Texas, Online 2002).

*How are the interests of different stakeholders served by varying implementations of sunshine laws and how do these different interests attempt to influence the sunshine policies of states?* Sunshine laws may be ripe for analysis from the perspective of interest-group theory.[11] Which stakeholders tend to be served by which kinds of open-meetings and records laws? In which ways might changes in the laws tilt the balance of power in the governance of higher education? In what ways have disenfranchised or disgruntled actors, from the ranks of faculty, campus workers, students, neighborhood activists, or others, effectively employed the laws (or been thwarted by the laws) to influence institutional policies or decisionmaking in their favor? How have "policy entrepreneurs" effectively employed the laws to force onto the public agenda socially controversial or unpopular issues that otherwise might have been ignored or suppressed by "establishment" interests? To what extent do recent changes in some states' sunshine laws (e.g., ones shielding certain aspects of institutional governance from full public disclosure) reflect coordinated political activity by coalitions of like-minded actors? What factors and conditions give rise to such coalitions (i.e., interest aggregation)? How are they sustained over time in pursuit of their goals (i.e., group maintenance)? Pursuing these questions from the political-science tradition seems useful, perhaps even necessary, for improving scholarly understanding of the place of the laws in higher-education governance.

*May sunshine laws be viewed as a governance "fad"?* If sunshine laws are indeed weakening around the country, as suggested by some observers (see Schmidt, 2001), then they may be subject to the life-cycle patterns discerned recently by Birnbaum (2001). Some similarities to the management fads chronicled by Birnbaum are notable: the majority of such laws were first created in a time of perceived crisis, narratives were created at the time and evolved, and disillusionment set in and counter-narratives arguably began in recent years. The current counter-narrative regarding sunshine laws is that they can ruin presidential searches (see various articles by McLaughlin and Riesman and also various Chronicle of Higher Education articles, all cited earlier). Also, we see emerging concerns over whether sunshine laws "travel well" from other organizational sectors (e.g., public-works contracting) into higher education.

Of course, an important difference between sunshine laws and the fads studied by Birnbaum is their origins in the state legal and political rather than business context. Fads arising in the public domains of law and politics may be fundamentally different

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[11] Ann Austin and Gary Rhoades insightfully highlighted for us the value of taking this perspective on sunshine laws.

from fads in management. Yet, to the extent the analogy to Birnbaum's management fads holds, one may be able to draw some intriguing and perhaps useful conclusions regarding life-cycles of innovations in governance. In a broader sense, it seems important to examine conceptual linkages and differences between the organizational and political innovation literatures.[12]

*What accounts for variations in the approaches taken within distinct systems and institutions to identical sunshine laws?* It appears in our early analyses that sometimes, although the laws affecting two distinct systems or institutions are the same, the experiences of those systems within a common legal environment vary—what accounts for these different sunshine-related experiences of institutions under the same legal conditions? This appears to be a question of distinctive organization/environment relations and adaptation, in which organizational characteristics may mediate the effects of laws on particular settings. Earlier work in North Carolina on the implementation of legislatively mandated out-of-state enrollment limits revealed a similar phenomenon: there, the flagship state university achieved a distinctly more favorable institutional implementation of new legislation than other institutions in the North Carolina postsecondary system (see Frost, Hearn, and Marine, 1997).

*Under what conditions can secrecy and privacy contribute to effective decisionmaking and governance in higher education?* Our respondents vary in their views on the conditions under which knowledge should be kept in the "shade," i.e., out of public view. This question has resonance in the larger organizational and economic literatures, but has been little considered in higher education from a scholarly perspective. Organizational theorists have considered secrecy, privacy, and other information-flow issues as strategic factors in performance (e.g., see Stinchcombe, 1990). Economists have begun to produce a robust literature on information as a factor in economic markets, and several Nobel prizes in economics have been won in the area in the past decade (for one recent Nobel winner's work in this arena, see Stiglitz, 2000). Theoretical economists term the problem of secrecy a matter of "asymmetric information," i.e., a matter of two parties to a negotiation or transaction having different levels of knowledgability about the issues at hand. For example, private and public institutions compete aggressively for presidents and for funds of various kinds, and the information asymmetries involved in that public/private competition may have implications for effective governance in the

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[12] After all, it can be argued that political-science theories and research on diffusion arose out earlier research on innovation in organizations (e.g., the work of Rogers).

public sector. To our knowledge, the theoretical and research perspectives on information of other scholarly fields have not been considered in higher education. They merit attention.

**Conclusion**

Relations between higher education and the public (and the public's usual de facto representative in higher-education governance, the media) are a significant issue for institutional leaders, policymakers, and researchers. Peter Magrath (1998) has ably made this point:

> Why does it matter that tensions exist between higher education and the media? Because, while these tensions may be intellectually fascinating and partially inevitable, such tensions – in their more extreme forms – are not healthy for a political system that depends in large part on strong educational institutions and strong journalistic institutions. For example, the serious misunderstanding ... over college costs ... may well frighten lower-income and minority-group students away from pursuing college. And that will be harmful to our knowledge-driven economy and society, which requires the brains and skills of the whole population.

The importance of good media relations, and the associated importance of effective policies relating to public openness, suggests that analysis of issues surrounding the public openness of higher education is imperative. Unfortunately, from a rigorous analytic perspective, ascertaining the benefits, costs, and ultimate governance effects of various implementations of sunshine laws in public higher education is difficult if not impossible. All fifty states have had sunshine laws of some kind in place for many years, so there is no clear-cut "control group" in the public sector. Still, four analytic alternatives do exist, and each should be explored in future work.

*Public/Private Comparisons:* The missions of private institutions rarely emphasize the public good and the investment of state resources in that sector is far lower. Private higher education operates outside of the purview of sunshine laws, however, and

comparing governance activities, such as presidential selection, in the two sectors is worthwhile, as long as conclusions are reached cautiously.

*Comparisons across States:* States differ significantly in their politics, media context, higher-education systems, history, and culture, so state-level comparisons must be undertaken cautiously. Still, the nation's federal form of government provides 50 different state "laboratories" for policy experimentation. Although it would be grossly overstating the case to term a comparison of governing-board operations in, say, Florida and Washington, a " natural field experiment," it seems nonetheless safe to suggest that there may be something valuable to be learned from systematic comparison of the experiences of states under similar and different laws and environmental conditions.

*Comparisons across Systems within Individual States:* Systems within states sometimes vary in the laws affecting them. For example, in California and Minnesota, states with a constitutionally autonomous flagship institution, the research university sector is immune from some of the openness requirements in place in the state-university and community-college systems. Of course, different sectors in public higher education tend to have significantly different personnel, students, missions, and funding. Comparisons across systems within given states have the advantage of "controlling for" differences in state politics, history, and culture, however, while comparisons across states must deal with those confounding state-level differences. It seems appropriate to examine these within-state differences in the application of sunshine laws to particular settings. Like some comparisons across states, analysis of this variation may provide grounds for generating productive directions for analysis and policy consideration.

*Within-state Comparisons over Time:* Recent changes in the application of state sunshine laws to higher-education institutions may provide researchers opportunities to examine how certain reforms (e.g., the shielding from public view of donor records or the names of applicants in presidential searches) might influence select dimensions of institutional governance. By comparing the experiences of institutions before and after a change in state law, analysts may be able to discern the ground-level implications of state-level policy changes. Obviously, findings drawn from pre- and post-reform comparisons involving a single institution or state would necessarily need to be treated

cautiously, but still might contribute to useful insights on the governance influences of various kinds of policy changes.

Analyses such as those outlined above each make sense as feasible avenues to greater understanding of the costs, benefits, and effects of various forms of sunshine laws, and we will pursue each of these lines of attack on the issue. Unlike many topics in higher-education studies, sunshine laws are a significant concern among large numbers of stakeholders in the enterprise, including students, faculty, staff, administrative leaders, boards, the press, elected officials, and many members of the larger public. Given the absence of much systematic empirical and conceptual work on the topic in recent years, we welcome the opportunity for further work. We will also welcome your comments and suggestions as we proceed.

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## Appendix 1:
## The State Open-Meetings and Records Laws Project

The present paper is part of a larger project titled the "State Open-Meetings and Records Laws" project, which focuses on the development, application, and effectiveness of state "sunshine" laws as they relate to public systems of higher education. The project is funded by the Association of Governing Boards and the Center for Higher Education Policy Analysis at the University of Southern California.

The project has three phases. Phase 1 focused on the production of an annotated bibliography of relevant literature on open-meetings and records laws (see McLendon et al., 2003), interviews with national authorities on these laws, and the design of a data-collection and analysis plan.

Phase 2 focused on data collection in six chosen states with sunshine laws of various kinds. The six states for the empirical analysis are California, Florida, Iowa, Massachusetts, Texas, and Washington. Each was selected on the basis of prior studies of sunshine laws. In these six states, we collected documents and conducted interviews in person and by phone. Key persons interviewed included governing board chairs and vice chairs, presidents and chancellors, heads of faculty senates on affected campuses, university attorneys, university board secretaries, newspaper editors and education reporters, state attorneys general, governors' education policy advisors, chairs of education committees of state legislatures, and other informed observers of a state's sunshine laws. The focus of the interviews was on learning from individuals with substantial knowledge regarding open-meetings and records laws in their states.

Phase 3, currently underway, focuses on data analysis and the preparation of a final report containing our findings and policy recommendations. Data from interviews and documents obtained on site is being supplemented by data from a national survey of boards of trustees conducted by the Association of Governing Boards. Phase 3 is also pointed toward the preparation of conference presentations and papers for publication.

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